



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

Docket Number USCG-2022-0614

RIN 1625-AA08

Special Local Regulation; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for all navigable waters of the Ohio River, extending the entire width of the river, between mile marker (MM) 464.0-473.0 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, the special local regulation will extend west to MM 476.0. This action is necessary to provide for the safety of life on these navigable waters near Cincinnati, OH during Riverfest 2022 on September 4, 2022 through September 5, 2022. This rulemaking prohibits persons and vessels from operating above no wake speeds in the area unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 12 p.m. on September 4, 2022 through 3 a.m. on September 5, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0614 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Harp, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513-921-9033, email Thomas.L.Harp@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this regulation by September 4, 2022 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Ohio Valley (COTP) has determined that potential hazards with the firework display, occurring at 12 p.m. on September 4 until 3 a.m. on September 5, 2022, will be a safety concern for all navigable waters on the Ohio River between MM 464-473 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, this regulation will extend west to MM 476.0 on the Ohio River before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 12 p.m. on September 4 until 3 a.m. September 5, 2022. The special local regulation would cover all waters of the Ohio River between MM 464-479 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, this regulation will extend west to MM 476.0 on the Ohio River in Cincinnati, OH. The duration of the special local regulation is to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event. No vessel or person is permitted to operate above no wake speeds without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector Ohio Valley. They may be contacted on VHF-FM Channel 16 or by telephone at 1-800-253-7465. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, time-of-day of the special local regulation. The special local regulation will be in place from 12 p.m. on September 4, 2022 to 3 a.m. on September 5, 2022 on the Ohio River between MM 464-479 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, this regulation will extend west to MM 476.0 on the Ohio River in Cincinnati, OH. The Coast Guard will issue a written Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the special local regulation, and this rule allows vessels to seek permission from the COTP or a designated representative to enter the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation from 12 p.m. on September 4, 2022 until 3 a.m. on September 5, 2022 that prohibits vessels from operating above no wake speeds on all navigable waters of the Ohio River between MM 464-479 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, this regulation will extend west to MM 476.0 on the Ohio River in Cincinnati, OH. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT

section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T08-0614 Special Local Regulation, Ohio River, Cincinnati, OH

(a) *Location.* All navigable waters of the Ohio River between MM 464-479 and the Licking River between MM 0.0-0.3. In the event the Ohio River Gauge is at or above the 45 foot level, this regulation will extend west to MM 476.0 on the Ohio River in Cincinnati, OH.

(b) *Period of Enforcement.* This special local regulation will be enforced from 12 p.m. on September 4, 2022 through 3 a.m. on September 5, 2022.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, all vessels entering the zone described in paragraph (a) of this section are prohibited from operating above no wake speeds unless specifically authorized by the Captain of the Port (COTP) or a designated representative. Persons or vessels desiring to operate above no wake speeds must request permission from the COTP or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) Persons and vessels permitted to deviate from this special local regulation must transit at the slowest safe speed and comply with all lawful directions issued by the

COTP or a designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notice to mariners of the enforcement period of the special local regulation as well as any changes in the planned schedule.

Dated: August 09, 2022

H.R. Mattern,
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley

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